

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CHARLES EASTER,

vs.

CDC, et al.,

Plaintiff,

Defendants.

CASE NO. 09cv0555-LAB (RBB)

**ORDER ADOPTING REPORT  
AND RECOMMENDATION;**

**ORDER GRANTING IN PART  
MOTION TO DISMISS; AND**

**ORDER DISMISSING CLAIMS**

On March 18, 2009, Plaintiff, a prisoner proceeding *pro se*, filed his complaint seeking damages pursuant to 42 U.S.C. § 1983. Plaintiff was attacked by a group of fellow inmates and attacked a second time after, he alleges, Defendants failed to protect him. This suit is a continuation of an earlier suit that was dismissed to permit Plaintiff to exhaust administrative remedies.

Defendants then moved to dismiss all claims except Petitioner's Eighth Amendment claim based on Defendants' alleged deliberate indifference to Plaintiff's safety. This matter was referred to Magistrate Judge Ruben Brooks for a report and recommendation pursuant to pursuant to 28 U.S.C. § 636 and Civil Local Rule 72.1(d). Following extensions of time to allow for briefing, Judge Brooks issued his report and recommendation (the "R&R"). The

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1 R&R permitted any party to file and serve written objections no later than February 26, 2010.  
2 Objections have not been received from either party.

3 A district judge "may accept, reject, or modify the recommended decision" on a  
4 dispositive matter prepared by a magistrate judge proceeding without the consent of the  
5 parties for all purposes. Fed. R. Civ. P. 72(b); see 28 U.S.C. §636(b)(1). "The court shall  
6 make a de novo determination of those portions of the [report and recommendation] to  
7 which objection is made." 28 U.S.C. §636(b)(1). Section 636(b)(1) does not require some  
8 lesser review by the district court when no objections are filed. *Thomas v. Arn*, 474 U.S.  
9 140, 149-50 (1985). The "statute makes it clear that the district judge must review the  
10 magistrate judge's findings and recommendations 328 F.3d 1114 de novo *if objection is*  
11 *made*, but not otherwise." *United States v. Reyna-Tapia*, 1121 (9th Cir. 2003) (en banc)  
12 (emphasis in original). The statutory provision does not require that the district court  
13 conduct some lesser review when no objections are filed. *Thomas*, 474 U.S. at 149–50  
14 (1985) ("It does not appear that Congress intended to require district court review of a  
15 magistrate's factual or legal conclusions under a de novo or any other standard when neither  
16 party objects to those findings").

17 The Court has reviewed the R&R and it appears to be correct and its legal  
18 conclusions valid. The Court therefore **ADOPTS** the R&R. Defendants' Motion to Dismiss  
19 the monetary claims against Defendants Morris, Panichello, and Perez in their official  
20 capacities is **GRANTED** and these claims are **DISMISSED** without leave to amend.  
21 Supplemental state claims against Defendants in their official capacities are **DISMISSED**  
22 without leave to amend. Plaintiff's claim under the Fourteenth Amendment is **DISMISSED**  
23 without leave to amend because the allegations are preempted by the Eighth Amendment.  
24 Plaintiff's Fifth Amendment claim is **DISMISSED** with leave to amend his claim involving  
25 placement in administrative segregation, but without leave to amend his claim for violation

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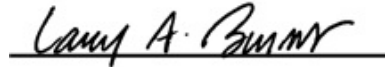
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1 of the prohibition against double jeopardy. Plaintiff's claim for injunctive relief is moot  
2 because it is not available to him, and is therefore **STRICKEN**.

3 **IT IS SO ORDERED.**

4 DATED: March 9, 2010

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6 **HONORABLE LARRY ALAN BURNS**  
7 United States District Judge  
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